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10 August 2020

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**re: Feedback on Matawii Water Storage Reservoir application (LP16) under COVID-19 Recovery (Fast-track Consenting) Act 2020**

We have been asked to reply to your letter of 5 August 2020 to Te Tai Tokerau Water Trust commenting on the Matawii Water Storage Reservoir application lodged with the EPA under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

This letter accompanies the re-filing of the application and reviews the feedback letter received from you in response to the earlier application. This letter will deal with the various matters referred to, and where appropriate use the headings contained, in your letter of 5 August.

**Information Considered Missing**

1. The identification of occupiers of the site and of land adjacent to the site has been updated and completed to the extent possible following reasonable enquiry. You make mention of Top Power. I believe you mean Top Energy. It is the lines network operator so is not an occupier in the generally understood meaning of the word.
2. Your letter indicated that while relevant rules were included in pages 57-63 of the AEE there was no assessment of the activity against any requirement, condition or permission in such rules or against the standards in the rules. With respect it is simply not possible to assess an activity against the relevant rules in the regional planning instruments as those rules do not contain requirements, conditions or permissions let alone standards. These provisions are rules which you either meet or you do not.
3. For instance in terms of Rule C.2.1 of the Proposed Regional Plan for Northland the assessment identifies that the construction of the proposed dam within the bed of the Kopenui strength does not meet the requirements of the rule so as such requires consent either as a discretionary or non-complying activity. The relevant rules do not contain any requirements conditions or permissions and has no standards.
4. This is the case throughout the regional planning rules identified.
5. Where the activity is a controlled or restricted discretionary activity and in some cases in the Far North District Plan with discretionary activities there are standards

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against which activities can be assessed. In all such cases the requisite assessment has been undertaken.

6. With respect there is no missing information category under this heading.

### **Assessment of Economic Effects**

7. While the Trust believes that there was more than sufficient particularised detail to enable assessment of economic effect Appendix J has been substantially extended. It now includes a project overview and economic assessment together with a report from the Far North District Council's meeting of 25 June 2020 and the letter from the relevant authorities in Northland – Northland Regional Council, Kaipara District Council and Far North District Council – with respect to water storage projects to the Ministry of Business Innovation and Employment. This sets out the benefits, not just in employment but the wider community benefit, that the water storage projects would have for Northland. Some redacting of that letter will be evident but that is for personal and commercial sensitivity purposes. In addition there is the material upon which Insight Economics relied upon together with material from Far North Holdings Limited's website in relation to the industrial park to be created in conjunction with the storage dam. This fuller detail should assist your evaluation of the economic effects of the proposal and assist assessment against part 2 of the Resource Management Act 1991.

### **Preliminary Concept Plan**

8. The proposition that the preliminary concept design for the dam does not contain sufficient information to enable assessment is not accepted. The construction of a dam requires a building consent in terms of the Building Act 2004. It is through the building consent process that much of the matters which are of apparent concern to the EPA will be addressed should consent be granted by the panel. It is submitted with respect that the detailed design parameters which would be a part of a building consent application are not relevant to the extent you suggest.
9. To assist in your consideration a further report from Riley Consultants has been obtained. This is attached as Appendix Q to the application. It is submitted that the preliminary design report (Appendix C to the application) contains sufficient investigation, detail and design to allow for the assessment of potential adverse effects that may arise from the construction, operation or uncontrolled release of the reservoir contents. The general parameters of the design are covered. It is not intended, and with respect it should not be expected of an applicant, that the detailed construction design be submitted as part of a resource consent application. That follows should consent be granted. The process to be followed is set out in this supplementary report from Riley Consultants.
10. Notwithstanding that, this further report identifies that further work has been undertaken which suggests that the basic parameters which would support the dam being constructed are favourable.
11. Simply because the design is preliminary does not in any way impede evaluation of its physical effects on the locality, including landscape and visual effects. What the dam will look like in terms of its presence in the environment is well established. This has been adequately assessed in the landscape assessment.
12. It would be unusual to expect an application for a resource consent to contain a level of design to the standard you seem to be suggesting. That design would follow if consent is granted. It would be financially imprudent to effectively design

a dam to a constructable stage without a resource consent. It is not understood that the panel is to consider specific engineering issues.

13. There will be further testing and analysis but that is relevant in terms of the building consent. Sufficient information for consideration in terms of consenting evaluation requirements have been provided.

### **Former Farm Quarry**

14. The former farm quarry is downstream of the dam. Quite properly its existence has been identified but as is shown, see the new plan attached to Appendix Q, the design of the dam will avoid it and so there is no need for a consent to be obtained in terms of the relevant national environmental standard. There is no information that can be supplied as the activity will not impinge on this site. The quarry is "downstream" of the dam so does not impact upon the dam. The activity does not involve the discharge of any contaminant in terms of this site.

### **Operation of the Water Storage Reservoir**

15. This with respect is a standard methodology of resource consent processing. It would not be expected that the detailed operational management plan would be prepared prior to the consent sought being granted. Similarly other plans for onsite activities would be prepared should consent be granted.
16. There has been a full hydrological assessment of water flows. This is set out in Appendix D. It is submitted that this is sufficient to enable an understanding of the potential and actual effects of the proposed reservoir. These questions have been addressed.
17. In relation to dam failure this again has been addressed through Appendix P but will be a matter for further consideration as part of the building consent process. Plans in relation to a dam failure will be developed in relation to that consent. Until final design and building consent criteria are fully established it would not be possible to establish a reservoir management plan.

### **Assessment against Planning Documents**

18. The proposition that a more detailed assessment of the activity is required is rejected. The extent of the planning provisions which apply have been fully particularised. There has then been a very thorough and detailed assessment of the effects of the activity and then of the activity against the relevant planning instruments. As stated earlier it is not possible to assess many of the rules as you contend simply because as they are rules they do not contain requirements, conditions or permissions let alone standards. The assessment identifies where the activity does not comply with the rule and why and what its status is in terms of the relevant rule. The assessment follows against the effects of the objectives and policies.
19. In any planning document there are always objectives and policies which might be seen to conflict with each other. As identified in caselaw what is required is a "fair appraisal of the objectives and policies read as a whole".<sup>1</sup>
20. With respect the author of the AEE has reviewed the objectives and policies as a whole in the context of this application and its particular statutory context.

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<sup>1</sup> See RJ Davidson Family Trust v Marlborough DC [2019] NZRMA 289 at para 73

21. That assessment includes consideration against the standards and regulations to which you refer at section 11 pp.101 – 106. This review of the relevant environmental standards and regulations to which you refer is, with respect, thorough and detailed.

### **Discharge of Contaminants**

22. There is no detailed discussion of the sensitivity of the receiving environment to a discharge of contaminants because the activity does not envisage any discharge of contaminants. This is a water storage dam and there is no basis it is believed upon which any discharge of contaminant assessment would be required. This is covered at para 9.6.1.1 of the AEE.

### **Identification of Persons Affected**

23. It is submitted with respect that there has been a consideration of those who have been affected. Detailed consultation has been undertaken. As is clear from the application wide sectors of the community have been approached.

### **Effects of the Activity**

24. With respect the proposition that the monitoring of the effects of activity is not specified is rejected. The conditions of consent make it clear as to which entity will be responsible for monitoring. The construction management plan for instance is to be submitted to the Northland Regional Council for certification. Similarly the erosion and sediment control management plan will be supplied to the Northland Regional Council for certification. In each case where a plan is required the body responsible for certification is identified. That body would thereafter assume the responsibility of monitoring in the same way as any other resource consent.
25. With respect the effect on recreational and cultural values has been assessed. Effects of the recreational use of the stream has been identified. This is at para 9.12 of the AEE. What other recreational or cultural values that might need to be evaluated is not known.
26. It is commented that there has been no separate cultural impact assessment from Ngati Rangī. Again with respect that is not something which can be utilised as a bar against this application proceeding to be considered. The applicant has commissioned a CIA. It invited parties to participate in the process. They have had that opportunity. If someone has not chosen to contribute, whatever their reason, such cannot be a bar to the application being considered.
27. The applicant has met the statutory requirement. It has consulted with relevant iwi and hapū. A party consulted can reserve to itself the right to respond outside of the Applicant's CIA. How they respond is up to them. The applicant has met its statutory obligation.

### **Conclusion**

28. It is submitted that the application is of more than sufficient detail to address the requirements of both the Resource Management Act 1991 and the COVID-19 Recovery (Fast-track Consenting) Act 2020. With respect the bases upon which the report was rejected namely as set out in points a) and b) of p.1 of your letter have either been addressed within the amended report or have overlooked that what you suggest is missing is not in fact missing because such does not exist. To the extent the intent of clauses 9(1)(h), 9(2)(f) and 9(3)(b) of Schedule 6 of the latter Act requires compliance it can only be done as has been done in the AEE by

an assessment against the effects of the activity and the relevant objectives and policies from which the relevant rules flow.

29. In terms of the other areas where you contend there is a lack of detail or a shortfall in the amount of information provided it is the position of the Trust that either it has provided that additional information or it has addressed your concerns or that there is no basis for the concerns raised. Some of these are matters which would be addressed at further stages in the process such as building consent stage in the event that the consent sought is granted.

Yours faithfully

**THOMSON WILSON**

A handwritten signature in black ink, appearing to read 'G J Mathias', with a stylized flourish at the end.

**G J MATHIAS**

Partner

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